

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1724982 ALBERTA ULC,

Plaintiff,

v.

21-CV-834 (JLS) (HKS)

PARK AVENUE WHOLESALE, INC.,

Defendant.



ORDER ON MOTIONS IN LIMINE

On April 19, 2023, the Court heard argument on the pending motions *in limine* and issued the following rulings, for the reasons below and as stated more fully on the record:

- Plaintiff's motion *in limine* to preclude Defendant from offering evidence of third-party use of the term "Buffalo" or depictions of a bison/buffalo (Dkts. 63, 64, 65).

The Court denied Plaintiff's motion. The probative value of such evidence is not substantially outweighed by the risk of unfair prejudice, confusion of the issues, misleading the jury, etc. under Federal Rule of Evidence 403.

- Defendant's motion *in limine* to exclude from evidence opinions and testimony of G. Douglas Olsen and Brian Buss (Dkts. 66, 67).

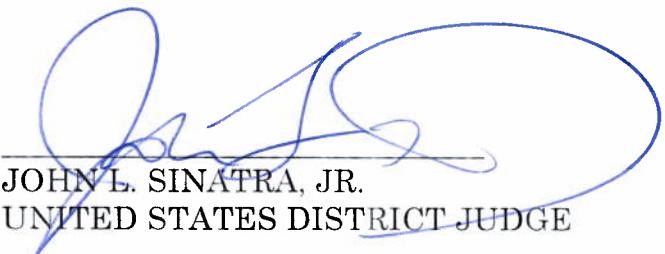
As to the survey and related expert opinions of G. Douglas Olsen, the Court denied the motion to exclude. The survey is sufficiently reliable and admissible under Federal Rules of Evidence 702 and 403.

As for the expert opinions of Brian Buss related to “reasonable royalty” calculations, the Court granted the motion to exclude such evidence.

As for the expert opinions of Brian Buss related to calculations of damages based on profits for disgorgement, the Court granted the motion to exclude as to the higher calculation (based on all of Defendant’s sales), but denied the motion to exclude as to the lower calculation (based on Defendant’s supplied numbers) and as to the middle calculation (based on Buss’s adjustments from Defendant’s supplied numbers).

SO ORDERED.

Dated: April 20, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE